

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8722 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MANISH DYEING & PRINTING MILLSPVT LTD

Versus

GUJARAT INDUSTRIAL INVESTMENT CORPORATION

Appearance:

MR MJ THAKORE, Sr. Advocate with MR CL SONI for Petitioner
MR AY KOGZE for Respondent No. 2
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/06/2000

ORAL JUDGEMENT

1. This special civil application was dismissed for default but the M.C.A. filed for restoration of the same has been allowed today and it is ordered to be restored to its original number. On request of the counsel for

the parties, the matter is taken up for hearing.

2. Heard the learned counsel for the parties, and perused the special civil application and proposed amendment.

3. The petitioner is praying for quashing and setting aside the action on the part of respondent No.1 in not giving set off/credit or adjustment of the amount of dues payable by the respondent No.2 to the respondents No.3 to 5 in purchase price agreed to be paid by the petitioner by issuing suitable direction under Article 226 of the Constitution of India. Another prayer has been made for direction to the respondents No.3 to 5 to refund the amount of dues payable by the respondent No.2 and paid by the petitioner as stated in a Chart at Annexure 'E' to the petition. By amendment of the petition, further prayer has been made to direct the respondent No.1 to give set off/adjustment/credit of Rs.9,47,750/= being amount of interest as per the order passed by this Hon'ble Court dated 20th June, 1996 in special civil application No.3808 of 1996 i.e. purchase price to be paid by the petitioner as per the agreement with the respondent No.1.

4. The facts of the case are that the petitioner is the auction purchaser of assets of respondent No.2 Goyal Silk Mills Pvt. Ltd. in auction held by Gujarat Industrial Investment Corporation u/s. 29 of the Gujarat State Financial Corporation Act, 1951. The offer of the petitioner for Rs.2,64,00,000/= was accepted by the respondent No.1. The petitioner agreed to pay 30% of the total amount on acceptance of his offer and remaining amount of Rs.1,84,80,000/= in quarterly installments. The petitioner was handed over the possession of the Unit on 15th January, 1997. The petitioner, as per its case, was eager to start its new unit because it had invested huge amount but the respondent No.3 was not ready to reconnect the electric supply and the respondents No.4 and 5 were not ready to give necessary registration or permission on the ground that unless and until the petitioner clear the dues of earlier unit, the petitioner could not be granted permission. The petitioner was thus compelled to clear the dues of the respondent No.2. The petitioner paid the dues of the earlier unit i.e. respondent No.2 as per details given in separate chart along with the petition to respondents NO.3 to 5. As against the dues payable by the respondent No.2 to the respondent No.1. and respondent No.6, G.S.F.C., realisation from the assets of respondent No.2 is on higher side. The petitioner had agreed to purchase unit

at Rs.2,64,00,000/= and dues of respondent No.1 and 6 i.e. G.S.F.C. payable by the respondent No.2 are approximately Rs.1,64,00,000/-. Thus, what he stated that the excess amount Rs.1 crore out of which dues of respondent No.2 paid by the petitioner could be adjusted, set off or given credit to the petitioner.

5. It is a case where the petitioner has paid the dues of respondent No.2 to respondent No.3, 4 and 5 without there being any compulsion from their side. The dues of the defaulting unit may not payable by the petitioner. Instead of paying the same, the petitioner could have taken appropriate legal action against those respondents. Earlier, in the special civil application filed by Goyal Silk Mills Pvt. Ltd. where the petitioner was also a party, the parties have arrived at some understanding and which they have agreed to work out outside the court. Accordingly, that petition had been disposed of and the petitioner has paid the amount. In view of this fact, it is not a case where these types of disputes can be gone into under Article 226 of the Constitution. If the petitioner considers that for liabilities of the respondent No.2, it is not under any legal obligation to discharge the same then for the payment made against these liabilities and for recovery of the same, only appropriate remedy would have been to file the civil suit. These are the matters which are to be gone into by the Civil court and not in the proceedings under Article 226 of the Constitution. This writ petition for the relief as prayed for, more so, when earlier the petitioner and the respondent No.2, in the petition filed by the respondent No.2 have given out to this court that they settled out their disputes outside the court is wholly misconceived.

6. In these facts, this petition is wholly misconceived and the same is dismissed. Rule discharged Interim relief, if any, granted stands vacated. However, the dismissal of this petition will not come in the way of the petitioner, if it so desire, to file a civil suit for its grievance made in this petition.

zgs/-